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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 **RODNEY B.,¹**

12 **Plaintiff,**

13 **v.**

14 **LELAND DUDEK, Acting**
15 **Commissioner of Social Security,²**

16 **Defendant.**
17

Case No. 2:24-cv-02655-PD

**MEMORANDUM OPINION
AND ORDER AFFIRMING
AGENCY DECISION**

18
19 Plaintiff challenges the denial of his application for Social Security
20 Disability Insurance Benefits. For the reasons stated below, the decision of
21 the Administrative Law Judge is affirmed.
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25 ¹Plaintiff's name is partially redacted in accordance with Federal Rule of Civil
26 Procedure 5.2(c)(2)(B) and the recommendation of the Committee on Court
Administration and Case Management of the United States Judicial Conference.

27
28 ² Leland Dudek became the Acting Commissioner of Social Security on February 18,
2025, and is substituted as Defendant in this suit. *See* 42 U.S.C. § 405(g).

I. Pertinent Procedural History and Disputed Issues

On November 6, 2020, Plaintiff protectively filed an application for a period of disability and Disability Insurance Benefits (“DIB”) under Title II of the Social Security Act (“SSA”), alleging disability beginning March 27, 2019. [Administrative Record (“AR”) 238-241.]³ Plaintiff’s application was denied administratively on July 28, 2021, and upon reconsideration on December 20, 2021. [AR 31, 111-20.] Plaintiff requested a hearing, which was held via telephone due to the COVID-19 pandemic on December 5, 2022, before an Administrative Law Judge (“ALJ”). [AR 46-77.] Plaintiff appeared with counsel, and the ALJ heard testimony from Plaintiff and a vocational expert. [Id.] On March 14, 2023, the ALJ issued a decision finding that Plaintiff has not been under a disability as defined by the SSA, from March 27, 2019, through the date of decision. [AR 31-41.] The Appeals Council denied Plaintiff’s request for review on February 1, 2024, rendering the ALJ’s decision the final decision of the Commissioner. [AR 1-6.]

The ALJ followed the five-step sequential evaluation process to assess whether Plaintiff was disabled under the Social Security Act. *Lester v. Chater*, 81 F.3d 821, 828 n.5 (9th Cir. 1995), *superseded on other grounds by regulation as stated by Farlow v. Kijakazi*, 53 F.4th 485, 488 (9th Cir. 2022); 20 C.F.R. § 416.920(a). At step one, the ALJ found that Plaintiff met the insured status requirements of the SSA through December 31, 2025, and had not engaged in substantial gainful activity since his alleged onset date, March 27, 2019. [AR 33 ¶¶ 1, 2.]

At step two, the ALJ found that Plaintiff had the following severe impairments: “bilateral hip disorders requiring resurfacing surgeries (20 CFR

³ The Administrative Record is CM/ECF Docket Numbers 11-1 through 11-10. Plaintiff’s Opening Brief is at Docket Number 14 and the Commissioner’s Brief is at Docket Number 17. Plaintiff did not file an optional Reply Brief.

1 404.1520(c)).” [AR 34 ¶ 3.] The ALJ found that these impairments
2 significantly limit Plaintiff’s ability to perform basic work activities. [AR 34.]

3 At step three, the ALJ found Plaintiff does not have an impairment or
4 combination of impairments that meets or medically equals the severity of one
5 of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20
6 CFR 404.1520(d), 404.1525 and 404.1526). [AR 34 ¶ 4.]

7 Before proceeding to step four, the ALJ found Plaintiff had the Residual
8 Functional Capacity (“RFC”) to perform light work with the following
9 limitations:

10 The claimant is limited to four hours of standing/walking, the rest
11 sitting without limitation, in an eight-hour workday. The
12 claimant must be able to change positions as often as every 30
13 minutes for one to two minutes, must avoid all climbing of
14 ladders, ropes, and scaffolds, and is limited to occasionally
15 performing all other postural activities. The claimant is
16 precluded from all exposure to dangerous work hazards such as
17 unprotected heights and exposed moving machinery, and he is
precluded from all uneven/unpaved surface walking tasks. The
claimant will be off-task for up to three percent of the workday
due to momentary symptom distractions.

18 [AR 34-35 ¶ 5.]⁴

19
20 ⁴ The regulations define light work as follows:

21 Light work involves lifting no more than 20 pounds at a time with
22 frequent lifting or carrying of objects weighing up to 10 pounds. Even
23 though the weight lifted may be very little, a job is in this category
24 when it requires a good deal of walking or standing, or when it involves
25 sitting most of the time with some pushing and pulling of arm or leg
26 controls. To be considered capable of performing a full or wide range of
27 light work, you must have the ability to do substantially all of these
28 activities. If someone can do light work, we determine that he or she
can also do sedentary work, unless there are additional limiting factors
such as loss of fine dexterity or inability to sit for long periods of time.
20 C.F.R. § 404.1567(b).

At step four, the ALJ compared the RFC assessed to the demands of Plaintiff's past relevant work as a professional athlete and found that Plaintiff is unable to perform any past relevant work. [AR 39 ¶ 6.]

At step five, the ALJ made findings of Plaintiff's vocational profile. The ALJ stated that on the alleged disability onset date Plaintiff was 30 years old, which the regulations define as a younger individual. [AR 39 ¶ 7 (citing 20 C.F.R. § 404.1563).] The ALJ noted that Plaintiff has at least a high school education and found that transferability of job skills is not material to the determination of disability. [AR 39 ¶¶ 8, 9.] Considering Plaintiff's age, education, work experience, and RFC, the ALJ found that there are jobs that exist in significant numbers in the national economy that Plaintiff can perform, including ticket seller, assembler, small products and security guard. [AR 39 ¶ 10.] Accordingly, the ALJ concluded that Plaintiff was not under a disability, as defined in the SSA from the alleged onset date, March 27, 2019, through the date of the decision. [AR 40 ¶ 11.]

Plaintiff raises two issues:

- (1) Whether the ALJ erred in assessing limitations in the RFC that are not supported by substantial evidence.
- (2) Whether the ALJ properly evaluated Plaintiff's subjective symptom testimony. [Dkt. No. 14 at 1-25.]⁵

II. Standard of Review

Under 42 U.S.C. § 405(g), a district court may review the agency's decision to deny benefits. A court will vacate the agency's decision "only if the ALJ's decision was not supported by substantial evidence in the record as a whole or if the ALJ applied the wrong legal standard." *Coleman v. Saul*, 979 F.3d 751, 755 (9th Cir. 2020) (citations omitted). "Substantial evidence means

⁵ For ease of the Court, Plaintiff's subjective symptom claim will be addressed first.

1 more than a mere scintilla but less than a preponderance; it is such relevant
 2 evidence as a reasonable person might accept as adequate to support a
 3 conclusion.” *Id.*; *Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (same).

4 It is the ALJ’s responsibility to resolve conflicts in the medical evidence
 5 and ambiguities in the record. *Ford v. Saul*, 950 F.3d 1141, 1149 (9th Cir.
 6 2020). Where this evidence is “susceptible to more than one rational
 7 interpretation” the ALJ’s reasonable evaluation of the proof should be upheld.
 8 *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008); *Tran v.*
 9 *Saul*, 804 F. App’x 676, 678 (9th Cir. 2020).⁶

10 Error in Social Security determinations is subject to harmless error
 11 analysis. *Ludwig v. Astrue*, 681 F.3d 1047, 1054 (9th Cir. 2012). Error is
 12 harmless if “it is inconsequential to the ultimate nondisability determination”
 13 or, despite the legal error, “the agency’s path is reasonably discerned.”
 14 *Treichler v. Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014).

15 **III. Discussion**

16 **A. The ALJ Properly Considered Plaintiff’s Subjective** 17 **Symptom Testimony**

18 **1. Applicable Law**

19 In the absence of proof of malingering, an ALJ may reject a litigant’s
 20 believability by identifying “specific, clear, and convincing” reasons supported
 21 by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir.
 22 2017). This requires the ALJ to “specifically identify the testimony [from a
 23 claimant] she or he finds not to be credible and ... explain what evidence
 24

25 ⁶ Although statements in unpublished Ninth Circuit opinions “may prove useful [] as
 26 examples of the applications of settled legal principles,” the Ninth Circuit has
 27 cautioned lower courts not to rely heavily on such memorandum dispositions
 28 particularly as to issues of law. *Grimm v. City of Portland*, 971 F.3d 1060, 1067 (9th
 Cir. 2020) (“a nonprecedential disposition is not appropriately used ... as the pivotal
 basis for a legal ruling by a district court”).

1 undermines that testimony.” *Lambert v. Saul*, 980 F.3d 1266, 1277 (9th Cir.
2 2020) (quoting *Treichler*, 775 F.3d at 1102); *Brown-Hunter v. Colvin*, 806 F.3d
3 487, 493 (9th Cir. 2015); *see also Smartt v. Kijakazi*, 53 F. 4th 489, (9th Cir.
4 2022) (“Ultimately, the ‘clear and convincing’ standard requires an ALJ to
5 show [their] work[.]”). Thus, to satisfy the substantial evidence standard, the
6 ALJ must provide specific, clear, and convincing reasons which explain why
7 the medical evidence is *inconsistent* with the claimant’s subjective symptom
8 testimony. *Ferguson v. O’Malley*, 95 F.4th 1194, 1200 (9th Cir. 2024).
9 (emphasis in original).

10 An ALJ may consider a claimant’s conservative treatment when
11 evaluating credibility, particularly when the claimant “responded favorably”
12 to minimal treatment. *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir.
13 2008); *Burkett v. Berryhill*, 732 F. App’x 547, 552 (9th Cir. 2018) (same).
14 Proof of “conservative treatment is sufficient to discount a claimant’s
15 testimony regarding severity of an impairment.” *Parra v. Astrue*, 481 F.3d
16 742, 751 (9th Cir. 2007); *Mojarro v. Berryhill*, 746 F. App’x 672 (9th Cir. 2018)
17 (same). An ALJ may also rely on an “unexplained or inadequately explained
18 failure to seek treatment or to follow a prescribed course of treatment,” and
19 the claimant’s daily activities. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th
20 Cir. 2014); *Loader v. Berryhill*, 722 F. App’x 653, 655 (9th Cir. 2018) (same).

21 An ALJ may consider a variety of factors in analyzing the believability
22 of a claimant’s symptom testimony, including “ordinary techniques of
23 credibility evaluation.” *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005);
24 *Evans v. Berryhill*, 759 F. App’x 606, 608 (9th Cir. 2019) (same).

25 An ALJ can consider whether there is a lack of objective medical
26 evidence supporting a claimant’s allegations. However, this factor “cannot
27 form the sole basis” for discounting subjective symptom testimony. *Burch*,
28 400 F.3d at 681; *Davis v. Berryhill*, 736 F. App’x 662, 665 (9th Cir. 2018).

1 A court must “review only the reasons provided by the ALJ in the
2 disability determination and may not affirm the ALJ on a ground upon which
3 [s]he did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Courts,
4 therefore, may not speculate as to the basis for unexplained conclusions but,
5 rather, must only consider the reasoning actually given by the ALJ. *See*
6 *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir. 2014).

7 Even if an ALJ impermissibly relies “on one of several reasons in
8 support of an adverse credibility determination,” the error is harmless if “the
9 ALJ’s remaining reasoning and *ultimate credibility determination* were
10 adequately supported by substantial evidence in the record.” *Carmickle v.*
11 *Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (citation
12 omitted).

13 2. Plaintiff’s Subjective Symptom Testimony

14 Plaintiff alleged an inability to work due to his right hip replacement,
15 left hip replacement, and severe arthritis. [AR 270.] As pertinent to the
16 disputed issue, Plaintiff testified at the hearing that he lives with his wife and
17 two children. [AR 53.] He testified that he was previously a professional
18 soccer player. [AR 56-57.] Plaintiff stated that he had bilateral hip surgeries
19 in 2019. [AR 57.] He stated that he tried to return to playing professional
20 soccer in 2021 but is no longer pursuing this goal. [AR 58-59.] Plaintiff
21 testified that he talks to his orthopedic doctor, Dr. Su, M.D., every month.
22 [AR 60-61.] Plaintiff testified that he is not able to sit or stand for long
23 periods of time and that the most he can stand, or sit, is one hour at a time
24 and then he needs to change positions. [AR 60-61.] Plaintiff testified that he
25 needs a cane if he walks longer than ten minutes. [AR 62.] Plaintiff testified
26 that he has “okay” and “bad days.” [AR 63.] On “bad days” Plaintiff requires
27 bedrest for two to four days with no physical activity. [AR 63.] Plaintiff
28 testified that he has “bad days” once or twice a week. [AR 63.] Plaintiff
testified that his wife does a lot of the household work. [AR 64.] Plaintiff

1 testified that he elevates his legs throughout the day. [AR 64.] Plaintiff
2 stated that he has tried to work but is not able to complete his work tasks.
3 [AR 65.] Plaintiff testified that after his surgeries he tried to make a
4 comeback to soccer, but the pain was too much. [AR 66-67.] He stated his hip
5 conditions became debilitating at the end of 2020 or beginning of 2021. [AR
6 66.]

7 In an Exertion Questionnaire prepared by Plaintiff in June 2021, he
8 reported that he has trouble sitting, driving, and doing household chores. [AR
9 280.] Plaintiff reported that he walks as minimally as possible and drives
10 only when absolutely necessary. [AR 280-81.] Plaintiff stated that he can
11 climb one flight of stairs inside his apartment and can lift his two-year-old in
12 and out of the car. [AR 281.] Plaintiff reported that he requires rest
13 periods/naps during the day. [AR 283.] Plaintiff takes pain medication. [AR
14 283.] Plaintiff reported that he does not use a cane but stated he may need
15 one for longer distances. [AR 283.]

16 In an Adult Function Report prepared by Plaintiff in August 2021, he
17 reported he does his best to take care of his two children and help his wife,
18 but his impairments make it very difficult. [AR 299.] Plaintiff stated that his
19 hip pain affects his sleep. [AR 300.] He has difficulty performing certain
20 personal care activities due to nerve pinching in his legs. [AR 300.] Plaintiff
21 requires reminders to take care of personal needs and grooming and to take
22 medication. [AR 301.] Plaintiff stated that he can prepare simple meals and
23 perform chores such as cleaning the kitchen, making beds, ironing, and taking
24 out the trash. [AR 301.] Plaintiff is able to drive, go out alone, and shop in
25 stores. [AR 302.] Plaintiff estimated that he could walk for ten minutes
26 before needing to stop and rest for one hour. [AR 304.]

3. Analysis

Plaintiff contends that the ALJ impermissibly rejected Plaintiff's subjective symptom testimony. [Dkt. No. 14 at 17-24.] The Commissioner responds that the ALJ's conclusions regarding Plaintiff's subjective statements were supported by substantial evidence. [Dkt. No. 17 at 3-7.] "To determine whether a claimant's subjective symptom testimony is credible, the ALJ must engage in a two-step analysis: 'First, the ALJ must determine whether the claimant has presented objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged.'" *Ferguson*, 95 F.4th *Id.* at 1199 (citing *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014)). If step one is satisfied, the ALJ can only reject the plaintiff's testimony for "clear and convincing reasons," which ultimately requires the ALJ to "show [their] work." *Id.* (citations and internal quotation marks omitted).

At step two of the subjective symptom testimony analysis, an ALJ must identify which testimony is not credible and specifically link that testimony to evidence in the record that undercuts the credibility of the testimony. *See Brown-Hunter*, 806 F.3d at 494; *accord Ferguson*, 95 F.4th at 1200-01. The ALJ may not simply make the conclusory statement that Plaintiff's testimony is not credible because it is inconsistent with the record and then proceed with an RFC analysis. *Brown-Hunter*, 806 F.3d at 493-94. This is because the obligation to provide clear and convincing "reasons" for discounting a plaintiff's testimony is separate and distinct from any obligation to summarize medical record evidence that supports an RFC determination. *Id.*

Here, the ALJ found that Plaintiff had severe impairments of bilateral hip disorders requiring resurfacing surgeries. [AR 34 ¶ 3.] The ALJ found that Plaintiff's medically determinable impairments could reasonably be expected to cause the alleged symptoms, however, Plaintiff's statements "concerning the intensity, persistence, and limiting effects of these symptoms

1 are not entirely consistent with the medical evidence and the other evidence
2 in the record for the reasons explained in this decision.” [AR 36.]

3 The ALJ did not find that Plaintiff had engaged in any degree of
4 malingering, and therefore was obliged to provide at least one “specific, clear,
5 and convincing” reason supported by substantial evidence for discounting
6 Plaintiff’s testimony concerning the intensity, persistence and limiting effects
7 of his symptoms. *Trevizo*, 871 F.3d at 678. The Court finds that the two
8 reasons the ALJ provided for discounting Plaintiff’s testimony—objective
9 medical evidence and daily activities—meet this burden. [AR 35-38.]

10 **a) Inconsistent Statements with the Objective**
11 **Medical Evidence**

12 First, the ALJ summarized Plaintiff’s testimony including that he had
13 right and left hip surgeries, is unable to sit or stand for long periods, and can
14 at most stand or sit for one hour at a time. [AR 35, 36.] The ALJ then
15 explained that the persuasiveness of Plaintiff’s allegations regarding the
16 severity of his symptoms and limitations was diminished because his
17 allegations were greater than expected in light of the objective medical
18 evidence. [AR 35-38.] The ALJ acknowledged Plaintiff’s medical records
19 indicating that he presented with right hip pain in April 2019; that physical
20 examination showed significant pain with range of motion in the right hip;
21 and x-rays revealed evidence of severe osteoarthritis and impingement
22 morphology in the right hip and narrowing and impingement morphology in
23 the left hip. [AR 36.] The ALJ cited to an MRI of the right hip that was
24 significant for degenerative changes, advanced chondral loss, and edema. [AR
25 36 (citing AR 337-38).] The ALJ noted that Plaintiff underwent right hip
26 resurfacing surgery in May 2019 and left hip resurfacing surgery in December
27 2019 with surgeon Edwin Su, M.D. [AR 36 (citing AR 343, 369).] The ALJ
28 explained that in July 2019, after the right hip surgery, Plaintiff reported
improvements in range of motion and strength, that he could put on his shoes

1 and socks with ease, that he could walk unlimited distances and use a
2 stationary bike. [AR 36 (citing AR 462).] The ALJ further noted that physical
3 examination showed no tenderness, no evidence of joint instability, and no
4 pain with straight leg raising test. [AR 36 (citing AR 462).]

5 The ALJ noted that in March 2020, after the left hip surgery, Plaintiff
6 reported occasional pinching in the front of his hip, but improved pain. [AR
7 36 (citing AR 375).] The ALJ highlighted that Plaintiff reported to Dr. Su
8 that he could walk unlimited distances and was doing well in physical
9 therapy. [AR 36 (citing AR 375).] The ALJ pointed out that Plaintiff's
10 physical examination showed no tenderness, excellent range of motion,
11 improving strength, and no instability of the joint; his neurologic examination
12 was normal; and x-rays showed no evidence of complication. [AR 36 (citing
13 AR 375-76).]

14 The ALJ noted that in November 2020, Plaintiff reported to Dr. Su that
15 his right hip was doing "very well, without any pain or limitations"; his left
16 hip still gave him discomfort particularly when playing soccer; that he could
17 feel the pain after one and a half hours of strenuous activity; but, now that he
18 was not playing soccer because the soccer season had ended he also had no
19 pain in the left hip. [(AR 37 (citing AR 396-97).] The ALJ pointed out that
20 Plaintiff reported to Dr. Su that he had good flexibility, no limping, and could
21 walk unlimited distances. [AR 37 (citing AR 397).] The ALJ further noted
22 that Dr. Su's physical examination of Plaintiff found good toe-heel gait,
23 tenderness over the left medial groin, excellent range of motion, and full hip
24 flexor strength. [AR 37 (citing AR 396-97).]

25 The ALJ highlighted the June 2021 consultative examination with Dr.
26 O'Leary, who observed that Plaintiff had normal range of motion of both hips
27 and full motor strength and intact sensation in all extremities. [AR 37 (citing
28 AR 428-30).]

1 The ALJ further pointed out that in May 2022, Plaintiff reported to Dr.
2 Su that he had no issues with his right hip but reported pain and weakness on
3 the left side. [AR 37 (citing AR 470).] Upon examination, Dr. Su observed no
4 tenderness and excellent range of motion of the left hip, and he noted that x-
5 rays of the hips showed the implants in good position with no evidence of
6 complications. [AR 37 (citing AR 470).] The ALJ further noted that a
7 subsequent MRI of the left hip showed only some abductor tendinosis without
8 tear, which Dr. Su found did not provide an explanation of Plaintiff's
9 symptoms. [AR 37 (citing AR 470-71, 480-81).]

10 The ALJ properly discounted Plaintiff's subjective symptom statements
11 and testimony because they were at least in part inconsistent with the
12 objective medical evidence. *See Chaudhry v. Astrue*, 688 F.3d 661, 667, 671-
13 72 (9th Cir. 2012) (ALJ's finding that objective medical evidence did not
14 support plaintiff's pain allegations was specific, clear, and convincing reason
15 for discounting plaintiff's statements); *Kitchen v. Kijakazi*, 82 F.4th 732, 739
16 (9th Cir. 2023) (ALJ's conclusion that objective medical evidence was
17 inconsistent with plaintiff's statements of mental symptoms was specific,
18 clear, and convincing reason for discounting his statements). "After careful
19 consideration of the entire record," the ALJ found some of Plaintiff's
20 subjective symptom statements and testimony unsupported by and
21 inconsistent with the medical evidence. [AR 36; *see* AR 35-37]; *see also Bell-*
22 *Shier v. Astrue*, 312 F. App'x 45, 49 (9th Cir. 2009) (upholding ALJ's rejection
23 of plaintiff's pain and limitation claims when ALJ "examine[d] the entire
24 record").

25 While inconsistencies with the objective medical evidence cannot be the
26 sole ground for rejecting a claimant's subjective testimony, inconsistencies are
27 factors that the ALJ may consider when evaluating subjective symptom
28 testimony. *Burch*, 400 F.3d at 681; *Rollins v. Massanari*, 261 F.3d 853, 857
(9th Cir. 2001); *see also Smartt*, 53 F.4th at 498 ("When objective medical

1 evidence in the record is inconsistent with the claimant's subjective
2 testimony, the ALJ may indeed weigh it as undercutting such testimony.")
3 Accordingly, the ALJ properly considered the objective medical evidence in
4 discounting Plaintiff's subjective symptom testimony.

5 **b) Daily Activities**

6 Second, the ALJ noted that Plaintiff's daily activities were inconsistent
7 with disability. [AR 36-38.] The ALJ highlighted that Plaintiff reported to
8 his treating providers that he was able to engage in numerous activities,
9 including strenuous exercise, that directly contradicted his testimony that his
10 hips became debilitating at the end of 2020 or the beginning of 2021. [AR 35-
11 37.] The ALJ noted that Plaintiff reported in July 2020 that he was able to
12 complete 45 minutes of training involving moderate to high impact activities
13 before experiencing soreness in his left hip. [AR 36 (citing AR 382).] The ALJ
14 pointed out that in August 2020, Plaintiff reported that he wanted to return
15 to playing professional soccer. [AR 36 (citing AR 468).] The ALJ further
16 noted that Plaintiff reported no adverse effects from a training session the
17 previous day [August 5, 2020], and his functional limitations were listed as
18 "sports specific training: acceleration/deceleration, change of direction and
19 pivoting/twisting." [AR 36 (citing AR 386-87).] The ALJ pointed out that in
20 May 2022, Plaintiff reported that he did not have pain with activities of daily
21 living and could walk unlimited distances. [AR 37 (citing AR 470).]

22 Thus, the ALJ summarized Plaintiff's symptom testimony and then
23 proceeded to explain why both the medical record *and* Plaintiff's reported
24 level of functioning are inconsistent with his statements about the intensity,
25 persistence, and limiting effects of his pain. [See AR 35-38.] It is clear from
26 the opinion as a whole that the ALJ thoroughly considered Plaintiff's
27 testimony, found Plaintiff's daily activities as another reason the record does
28 not support the severity of Plaintiff's alleged symptoms, and accordingly
concluded Plaintiff was not as limited as alleged. [*Id.*]; see also *Dewey v.*

1 *Colvin*, 650 Fed. App'x 512, 514 (9th Cir. 2016) ("Claimant performed a full
2 range of daily activities – including attending college full time – that were
3 inconsistent with his subjective complaints, he improved when he used
4 behavior modification techniques, and the objective medical evidence showed
5 that he was not as limited as he claimed."). The ALJ reasonably concluded
6 that Plaintiff's reports to his treating providers that he could walk unlimited
7 distances, perform activities of daily living without pain, and only had left hip
8 pain with strenuous activity undermined his subjective testimony. While
9 Plaintiff likely can no longer play professional soccer, that does not mean that
10 he cannot perform at least light work.

11 In sum, the ALJ provided specific and legitimate reasons for
12 discounting Plaintiff's symptom testimony. *Trevizo*, 871 F. 3d at 675. Under
13 the relevant standard of review, "[i]f the evidence can reasonably support
14 either affirming or reversing the [ALJ's] conclusion, th[is] court may not
15 substitute its judgment for that of the [ALJ]." *Flaten v. Sec'y of Health &*
16 *Human Servs.*, 44 F.3d 1453, 1457 (9th Cir. 1995). As such, the Court finds
17 substantial evidence supports the ALJ's evaluation of Plaintiff's subjective
18 symptom testimony. *Molina v. Astrue*, 674 F.3d 1104, 1110 (9th Cir. 2012).

19 **B. The RFC Determination**

20 Plaintiff challenges the ALJ's RFC determination that he will be "off-
21 task for up to three percent of the workday" and the ALJ's conclusion that he
22 could only stand or walk for up to four hours of the workday contending that
23 the limitations are not supported by substantial evidence. [Dkt. No. 14 at 9-
24 16.]

25 **1. Applicable Law**

26 An RFC is "an assessment of an individual's ability to do sustained
27 work-related physical and mental activities in a work setting on a regular and
28 continuing basis." Social Security Ruling 96-8P, 1996 WL 374184, at *1

1 (1996). It reflects the most a claimant can do despite their limitations.
2 *Smolen v. Chater*, 80 F.3d 1273, 1291 (9th Cir. 1996). An RFC determination
3 must be based on all of the relevant evidence, including the diagnoses,
4 treatment, observations, and opinions of medical sources, such as treating and
5 examining physicians. 20 C.F.R. § 404.1545. The ALJ, not the claimant’s
6 physician, “is responsible for translating and incorporating clinical findings
7 into a succinct RFC.” *Rounds v. Comm’r Soc. Sec. Admin.*, 807 F.3d 996, 1006
8 (9th Cir. 2015). It is the ALJ’s responsibility to resolve conflicts in the
9 medical evidence and ambiguities in the record. *Ford*, 950 F.3d at 1149.
10 Where this evidence is “susceptible to more than one rational interpretation”
11 the ALJ’s reasonable evaluation of the proof should be upheld. *Ryan*, 528
12 F.3d at 1198.

13 For claims filed on or after March 27, 2017, new regulations govern how
14 an ALJ must evaluate medical opinion evidence. *See* Revisions to Rules
15 Regarding the Evaluation of Medical Evidence, 2017 WL 168819, 82 Fed. Reg.
16 5844-01 (Jan. 18, 2017); 20 C.F.R. §§ 404.1520c, 416.920c. Under the new
17 regulations, special deference is no longer given to the opinions of treating
18 and examining physicians on account of their relationship with a claimant,
19 and an ALJ’s “decision to discredit any medical opinion, must simply be
20 supported by substantial evidence.” *Woods v. Kijakazi*, 32 F.4th 785, 787 (9th
21 Cir. 2022) (“the requirement that ALJs provide ‘specific and legitimate
22 reasons’ for rejecting a treating or examining doctor’s opinion, which stems
23 from the special weight given to such opinions, is [] incompatible with the
24 revised regulations”) (citation omitted); 20 C.F.R. §§ 404.1520c(a), 416.920c(a)
25 (“We will not defer or give any specific evidentiary weight, including
26 controlling weight, to any medical opinion(s) ..., including those from [a
27 claimant’s] medical sources.”). The new regulations require ALJs to consider
28 and evaluate the persuasiveness of all medical opinions or prior
administrative medical findings from medical sources. *See*

1 20 C.F.R. §§ 404.1520c(a)-(b), 416.920c(a)-(b).

2 In determining how “persuasive” a medical source’s opinions are, an
 3 ALJ must consider the following factors: supportability, consistency,
 4 treatment or examining relationship, specialization, and “other factors.” 20
 5 C.F.R. §§ 404.1520c(c)(1)-(5), 416.920c(c)(1)-(5). “Supportability” and
 6 “consistency” are the most important factors to be considered when evaluating
 7 the persuasiveness of medical opinions and, therefore, the ALJ is required to
 8 explain how both factors were considered. *See* 20 C.F.R. § 404.1520c(b)(2),
 9 416.920c(b)(2). “Supportability means the extent to which a medical source
 10 supports the medical opinion by explaining the ‘relevant ... objective medical
 11 evidence.’” *Woods*, 32 F.4th at 791-92 (citing 20 C.F.R. § 404.1520c(c)(1)); 20
 12 C.F.R. § 416.920c(c)(1). “Consistency means the extent to which a medical
 13 opinion is ‘consistent ... with the evidence from other medical sources and
 14 nonmedical sources in the claim.’” *Woods*, 32 F.4th at 792 (citing 20 C.F.R.
 15 § 404.1520c(c)(2)); 20 C.F.R. § 416.920c(c)(2). While the ALJ’s decision must
 16 articulate how the ALJ considered supportability and consistency, the
 17 decision need not explain the remaining factors unless the ALJ is deciding
 18 among differing yet equally persuasive opinions or findings on the same issue.
 19 *See* 20 C.F.R. §§ 404.1520c(b), 416.920c(b); *Woods*, 32 F.4th at 792.

20 An RFC is defective if it fails to take a plaintiff’s limitations into
 21 account. *Valentine v. Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009).
 22 However, “there is no requirement in the regulations for a direct
 23 correspondence between an RFC finding and a specific medical opinion on the
 24 functional capacity in question.” *Chapo v. Astrue*, 682 F.3d 1285, 1288 (10th
 25 Cir. 2012) (noting that “components of an RFC assessment” need not
 26 necessarily “line up with an expert medical opinion”); *see also McIntosh v.*
 27 *Colvin*, 2018 WL 1101102, at *5 (S.D. Cal. Feb. 26, 2018) (“There is no
 28 requirement that the RFC recite medical opinions verbatim, rather the ALJ is
 responsible for translating and incorporating medical findings into a succinct

1 RFC.”). Finally, it is well established that RFC determinations are legal
2 decisions, not medical opinions. *Valerie C. v. Berryhill*, 2019 WL 450675, at
3 *6 (C.D. Cal. Feb. 5, 2019).

4 **2. Relevant Medical Evidence**

5 In June 2021, orthopedic surgeon Cornelius O’Leary, M.D., performed a
6 consultative examination on Plaintiff noting that he complained of bilateral
7 hip pain, status post total hip replacements in May and December 2019, and
8 bilateral knee pain. [AR 426.] Dr. O’Leary observed that Plaintiff had a
9 normal gait pattern and could get on and off the examination table without
10 assistance. [AR 428.] Dr. O’Leary also noted that Plaintiff displayed an
11 antalgic gait and needed a cane at all times. [AR 428.] Dr. O’Leary found
12 that Plaintiff was unable to stand on his heels and toes and that straight leg
13 raising test was positive bilaterally, radiating to the bilateral feet. [AR 428,
14 29.] Dr. O’Leary further noted that range of motion in the bilateral hips was
15 within normal limits and Plaintiff possessed full motor strength and intact
16 sensation in all extremities. [AR 428-30.] Dr. O’Leary opined that Plaintiff
17 could lift/carry 20 pounds occasionally and ten pounds frequently, he could
18 stand/walk less than two hours and sit for two hours in an eight-hour
19 workday, he could occasionally stoop, climb, kneel, crouch, crawl, squat,
20 engage in prolonged ambulation, and walk on uneven terrain. [AR 431.]

21 In July 2021, the State Agency medical expert, L. Lo, M.D., reviewed
22 Plaintiff’s medical records; described Plaintiff’s impairments as severe; and
23 concluded that Plaintiff could stand or walk approximately six hours out of an
24 eight-hour workday. [AR 83-85.] In December 2021, these findings were
25 affirmed by another State Agency medical expert, M. Ford, M.D. [AR 98-101.]
26 Drs. Lo and Ford opined that Plaintiff could perform light work, would need a
27 cane for long distance ambulation, and could occasionally perform postural
28 activities. [AR 85-87, 101-103.] Both doctors supported their opinions by

1 citing to Plaintiff's history of bilateral hip replacements and findings from the
2 orthopedic consultative examination. [AR 86, 102 (citing AR 425-31).]

3 In August 2022, Dr. Su opined that Plaintiff could stand for 60 minutes
4 at one time, for a total of two hours in a workday and sit for 60 minutes at one
5 time, for a total of two hours in a workday. [AR 487.] Dr. Su further opined
6 that Plaintiff could occasionally and frequently lift up to 20 pounds, could
7 occasionally bend, stoop, balance, climb ladders/stairs, operate motor vehicles,
8 tolerate heat/cold, tolerate dust, smoke or fumes, tolerate noise exposure, and
9 needed to elevate his legs. [AR 487.] Dr. Su also opined that Plaintiff should
10 never work around dangerous equipment. [AR 487.]

11 **3. The ALJ's Decision**

12 As set forth above, the ALJ found that Plaintiff could perform light
13 work with limitations to four hours of standing/walking in an eight-hour-
14 workday and will be off task for up to three percent of the workday due to
15 momentary symptom distractions. [AR 34-35 ¶ 5.] In determining Plaintiff's
16 RFC, the ALJ stated that she considered all symptoms and the extent to
17 which these symptoms can reasonably be accepted as consistent with the
18 objective medical evidence and other evidence, based on the requirements of
19 20 CFR 404.1529 and SSR 16-3p. [AR 35.] The ALJ also considered the
20 medical opinion(s) and prior administrative medical finding(s) in accordance
21 with the requirements of 20 CFR 404.1520c. [AR 35.]

22 The ALJ found the opinion of consultative examiner Dr. O'Leary not
23 persuasive. [AR 37-38.] The ALJ found that although Dr. O'Leary supported
24 his opinion with Plaintiff's subjective complaints of bilateral hip pain and
25 history of hip replacement surgeries, Dr. O'Leary's opinion is inconsistent
26 with the objective findings from the underlying examination. [AR 38.] For
27 example, the ALJ explained that Dr. O'Leary noted that the range of motion
28 in Plaintiff's hips was within normal limits bilaterally, and that Plaintiff also
possessed full motor strength in all extremities. [AR 38 (citing AR 430).] The

1 ALJ found that Dr. O’Leary’s report contains internal inconsistencies, which
2 renders it less persuasive. [AR 38.] The ALJ explained that at one point Dr.
3 O’Leary noted that Plaintiff could get on and off the examination table
4 without assistance and had normal gait pattern and then stated that Plaintiff
5 had antalgic gait, rose from the chair with difficulty, and was unable to stand
6 on his heels and toes. [AR 38 (citing AR 428).] The ALJ further explained
7 that Dr. O’Leary’s opinion is inconsistent with other physical examinations in
8 the record showing good toe and heel gait and negative straight leg raising
9 test. [AR 38 (citing AR 396-97, 527-28).]

10 The ALJ also found the opinions of orthopedic surgeon, Dr. Su to be
11 unpersuasive. [AR 38.] The ALJ noted that in May 2019, Dr. Su assessed
12 that Plaintiff was “incapacitated” and had limitations bending or twisting,
13 using public transportation, lifting, climbing stairs/ladders, and standing.
14 [AR 38 (citing AR 457).] The ALJ explained that this opinion was assessed
15 prior to the Plaintiff’s recovery from both hip surgeries, and it is minimally
16 relevant and inconsistent with more recent findings in the record. [AR 38.]
17 The ALJ also explained that Dr. Su provided very little written explanation in
18 support of the limitations assessed, particularly the limitations regarding
19 noise, temperature and respiratory irritants, which the ALJ found have no
20 basis in the record. [AR 38.] The ALJ also found Dr. Su’s opinion inconsistent
21 with his own progress notes from 2022 which found no evidence of tenderness
22 or instability in Plaintiff’s hips, in addition to excellent range of motion,
23 normal neurologic and vascular examinations, full abduction strength on the
24 right, and mildly decreased abduction strength on the left. [AR 38 (citing AR
25 470).]

26 The ALJ also considered the opinions of State Agency physicians Drs.
27 Lo and Ford and found them to be only partially persuasive. [AR 37.] Drs. Lo
28 and Ford opined that Plaintiff could perform light work, would need a cane for
long distance ambulation, could occasionally perform postural activities, and

1 concluded that Plaintiff could stand or walk approximately six hours out of an
2 eight-hour workday. [AR 85-87, 101-103.] The ALJ noted that the doctors
3 supported their opinions by citing to Plaintiff's history of bilateral hip
4 replacements and findings from the orthopedic consultative examination. [AR
5 37 (citing AR 425-31).] The ALJ explained that a somewhat reduced
6 standing/walking limitation and a limitation regarding changing of positions
7 is consistent with physical examination findings of antalgic gait [AR 37 (citing
8 AR 527-28)] and progress notes noting weakness in the left hip [AR 37 (citing
9 AR 470-71)]. The ALJ found that the use of a cane is inconsistent with
10 Plaintiff's statements in multiple progress notes that he could walk for
11 unlimited distances [AR 37 (citing AR 375, 397, 462, 470)].

12 4. Analysis

13 Plaintiff argues that the ALJ erred because each aspect of the RFC
14 finding, *i.e.*, four hours of standing/walking in an eight-hour-workday and
15 being off task for up to three percent of the workday due to momentary
16 symptom distractions does not correspond to a specific limitation found in a
17 medical opinion. [Dkt. No. 14 at 9-15.] Plaintiff, however, does not cite any
18 case law that supports this proposition and instead relies on three cases
19 where there was no medical opinion at all. [Dkt. No. 14 at 13-14.]; *See de*
20 *Gutierrez v. Saul*, 2020 WL 5701019, at *5 (E.D. Cal. Sep. 24, 2020) ("As to
21 Plaintiff's mental impairments, there are no opinions in the record from
22 treating or examining physicians related to Plaintiff's functional
23 limitations."); *Perez v. Sec'y of Health & Human Servs.*, 958 F.2d 445, 446 (1st
24 Cir. 1991) ("It is true that the record does not contain any medical evaluation
25 of claimant's physical residual functional capacity."); *Goolsby v. Berryhill*,
26 2017 WL 1090162, at *8 (E.D. Cal. Mar. 22, 2017) ("Because the record did not
27 include any opinions from treating or examining physicians related to
28 Plaintiff's mental abilities, the ALJ clearly rendered her own medical findings
that Plaintiff could perform 'simple routine tasks' in the RFC.").

1 Contrary to Plaintiff's contention, the ALJ is not required to rely upon a
2 specific medical opinion in formulating the RFC. The regulatory framework
3 provides that the ALJ must formulate the RFC "based on all the relevant
4 evidence in [their] case record," rather than a single medical opinion or piece
5 of evidence. 20 C.F.R. § 404.1545(a)(1). Indeed, the ALJ is responsible for
6 resolving conflicts in the medical testimony and translating the claimant's
7 impairments into concrete functional limitations in the RFC. *See Stubbs-*
8 *Danielson*, 539 F.3d at 1174-75 (affirming the ALJ's translation of moderate
9 functional limitations into the claimant's RFC). In essence, there "is a
10 presumption that ALJs are, at some level, capable of independently reviewing
11 and forming conclusions about medical evidence to discharge their statutory
12 duty to determine whether a claimant is disabled and cannot work." *Farlow*,
13 53 F.4th at 488.

14 Plaintiff does not challenge the ALJ's consideration of the medical
15 opinion evidence. The ALJ considered Dr. O'Leary's opinion that Plaintiff
16 could only stand and walk for less than 2 hours per workday and found his
17 opinion unsupported due to internal inconsistencies in his own report and
18 inconsistent with other examination findings in the record. [AR 37-38, 431.]
19 Likewise, the ALJ acknowledged Dr. Su's opinion that Plaintiff could only
20 stand for up to two hours per workday, but found his opinion unpersuasive,
21 because it was directly contradicted by Dr. Su's own contemporaneous
22 progress notes, which found no tenderness, excellent range of motion and only
23 mildly decreased abduction strength on the left. [AR 38, 375, 396-97, 462,
24 470.] The ALJ also considered the State Agency physicians RFC findings that
25 Plaintiff could perform light work, including standing or walking for six hours
26 per day and the use of a cane for walking, and found this partially persuasive,
27 concluding that the evidence of an occasional antalgic gait and some weakness
28 in the left hip supported reducing Plaintiff's ability to stand/walk, but that a
requirement for an assistive device for walking was inconsistent with the

1 evidence as a whole, because Plaintiff repeatedly reported that he could walk
2 for unlimited distances. [AR 37, 470.]

3 Plaintiff argues that the ALJ was required to pick and choose his RFC
4 findings from the limitations found by the various medical professionals. This
5 is simply not an accurate statement of the applicable law. The ALJ found
6 that while the conclusions by Drs. Lo and Ford that Plaintiff could stand or
7 walk for up to six hours were overly permissive, the conclusions by Drs.
8 O'Leary and Su that Plaintiff could not stand or walk for more than two hours
9 was overly restrictive. Based on the evidence as a whole, including the
10 numerous unremarkable objective findings found in Plaintiff's treatment
11 notes and his repeated representations that he could walk unlimited distances
12 and even engage in strenuous training, the ALJ reasonably concluded that
13 Plaintiff could stand or walk for up to four hours per workday.

14 The ALJ also included a limitation that Plaintiff would be off task up to
15 three percent of the workday due to momentary symptom distractions. [AR
16 34-35 ¶ 5.] Plaintiff argues that that the RFC finding is unsupported by
17 substantial evidence because no medical opinion justifies the exact off-task
18 percentage that the ALJ identified. [Dkt. No. 14 at 9-16.] The ALJ explained
19 that understanding that Plaintiff's momentary periods of increased symptoms
20 can cause distraction, she included brief periods of distraction into the work
21 limitations, including the ability to be off task 3% of the workday beyond what
22 is already accounted in the RFC (*i.e.*, physical exertional and on exertional
23 limitations meant to reduce pain and/or safety distractions). [AR 40.] The
24 ALJ further explained that this amounts to a couple of minutes hourly and is
25 meant to accommodate those brief periods of distraction caused by increased
26 symptoms even when working in a setting taking into account Plaintiff's
27 functional limitations. [AR 40.] The ALJ reviewed the evidence, interpreted
28 it in a light most favorable to Plaintiff, and reached reasonable conclusions
about the plausible extent of his functional limitations. Plaintiff points to no

1 evidence of any further limitations. Even if the ALJ erred by including an
2 unsupported off-task limitation, any “overinclusion of debilitating factors is
3 harmless.” *Johnson v. Shalala*, 60 F.3d 1428, 1436 n.9 (9th Cir. 1995).

4 Based on the overall record — including the medical evidence, Plaintiff’s
5 treatment history, his reports and testimony, and the opinion evidence, which
6 the ALJ found partially persuasive for the reasons and to the extent cited —
7 the ALJ found that Plaintiff retains the RFC to perform a range of light work
8 with specified limitations which take into account his walking/standing
9 limitations and that he will be off-task 3% of the workday. [AR 34-38.] Again,
10 while Plaintiff may have a different interpretation of the medical evidence, he
11 does not show that the ALJ’s interpretation was error. *See Burch*, 400 F.3d at
12 679 (“Where evidence is susceptible to more than one rational interpretation,
13 it is the ALJ’s conclusion that must be upheld.”). A decision to deny benefits
14 will be overturned only if it is not supported by “substantial evidence or it is
15 based on legal error.” *Id.* (citing *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
16 Cir. 1989)). Accordingly, the RFC set by the ALJ is supported by substantial
17 evidence and the Court finds no reversible error in the assessment of
18 Plaintiff’s RFC. *Coleman*, 979 F.3d at 755; *Biestek*, 139 S. Ct. at 1154.

19 **IV. Order**

20 For all the reasons stated above, the ALJ’s decision is affirmed. A
21 separate judgment will issue.

22 IT IS SO ORDERED.

23 Dated: March 26, 2025

24 

25 _____
26 HON. PATRICIA DONAHUE
27 UNITED STATES MAGISTRATE JUDGE
28